



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/838,197	04/20/2001	David W. Cannell	05725.0505-00	1548

22852 7590 02/06/2003

FINNEGAN, HENDERSON, FARABOW, GARRETT &  
DUNNER LLP  
1300 I STREET, NW  
WASHINGTON, DC 20006

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
----------	--------------

1751

8

DATE MAILED: 02/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-8

**Office Action Summary**

Application No.

09/838,197

Applicant(s)

CANNELL ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-160 is/are pending in the application.
- 4a) Of the above claim(s) 75-156, 159 and 160 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-74, 157 and 158 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other:

Art Unit: 1751

### DETAILED ACTION

1 This action is responsive to the response filed on November 08, 2002.

2 Applicant's election with traverse of invention Group I claims 1-74 and 157-158 is acknowledged. The traversal is on the ground(s) that if the search and examination of an entire application can be made without serious burden, the Office must examine it on the merits, even though it includes claims to distinct or independent inventions. This is not found persuasive because the inventions of group I, II and III are patentably independent and distinct and they are classified and searched in different classes and subclasses and the search required for Group I is not required for Group II and III. Therefore, restriction for examination purposes as indicated is proper. The requirement is still deemed proper and is therefore made FINAL.

3 Claims 75-156 and 159-160 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected claims, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

### *Claim Rejections - 35 USC § 102*

4 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-15, 17-24, 26-32, 34-40, 44-50, 52-59, 61-67, 69-73 and 157-158 are rejected under 35 U.S.C. 102(b) as being anticipated by Kolc et al. (US 5,223,252).

Kolc (US' 252) teaches a mild alkaline reducing composition for permanently waving or reshaping human hair. The composition comprises mercaptans derivatives such as 2-amino-3-

Art Unit: 1751

mercaptopropic acid, from about 2.0% to about 3.0% of cysteine compound (see col. 4, lines 31-49), amines such as alkanolamine and ammonia, metal hydroxides (see col. 5, lines 65-68) and alcohols such as ethanol and isopropanol (see col. 7, lines 32-33) and other constituents such as fatty alcohols (see col. 6, lines 2-3) and ammonium carbonate (see col. 5, lines 65-66). Kolc teaches all the limitations of the instant claims. Hence, Kolc anticipates the claims.

***Claim Rejections - 35 USC § 103***

5        The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8, 16, 25, 33, 41-43, 51, 60, 68 and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolc et al. (US 5,223,252) in view of Mougin et al. (5,753,215).

The disclosure of Kolc (US' 252) is summarized above. The reference fails to teach a composition comprising organic nucleophiles such as arginine and lysine as claimed in claims 6-8 and 41-43. Further, the reference fails to teach alkali metal salts, alkaline earth metal salts, organic addition salts or inorganic addition salts as claimed in claims 16, 25, 33, 51, 60 and 68. Furthermore, the reference does not teach or disclose organic nucleophile in an amount of 0.2% as claimed in claims 74.

However, the reference teaches a composition comprising organic nucleophile such as cysteine compound (see col. 4, lines 31-49). Further, the reference teaches a composition comprising acids, bases and buffers (see col. 7, lines 25-26) that generate the desired salts.

Art Unit: 1751

Mougin (US' 215) in analogous art of hair cosmetic composition teaches a hair straightening composition (see col. 6, lines 45-49). The composition comprises organic nucleophiles such as lysine, arginine or cystine and polyvalent metal salts such as chloride, nitrates, acetate, carbonate and sulphates (see col. 4, lines 26-31).

Therefore, in view of the teaching of the secondary reference one having ordinary skill in the art at the time the invention was made to be motivated to modify the primary reference by incorporating the lysine, arginine compounds and polyvalent salts as taught by Mougin to make such a composition. Such a modification would be obvious because the primary reference teaches and suggests the use of cystine, which is equivalent to the arginine and lysine as taught by Mougin. Also, the primary reference teaches a composition that comprises acids, bases, buffers and metal hydroxides which are all react together to generate the metal salts and, thus, a person of ordinary skill in the art would expect such a composition to have similar properties to those claimed, absent unexpected results.

With respect to claim 74, it would have been obvious to one having ordinary skill in the art at the time the invention was made to optimize the amount of the nucleophile used in the composition in order to get the maximum effective amount.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (703) 305-0217. The examiner can normally be reached on M - F (7:30-5:00) with alternate Friday off.

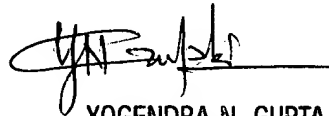
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (703) 308-4708. The fax phone numbers for the

Art Unit: 1751

organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Elhilo  
January 16, 2003

  
YOGENDRA N. GUPTA  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700